



Decision and Reasons for Decision

Citation:	<i>H99 and the Department of Families, Seniors, Disability Services and Child Safety [2026] QICmr 60 (22 April 2026)</i>
Application Number:	318737
Applicant:	H99
Respondent:	Department of Families, Seniors, Disability Services and Child Safety
Decision Date:	22 April 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NEITHER CONFIRM NOR DENY - request for documents about the applicant on another individual's file - whether the existence of responsive information can be neither confirmed nor denied - section 69 of the <i>Information Privacy Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Families, Seniors, Disability Services and Child Safety (the **Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**)² for 'hardcopy child safety documents relating to the applicant within specified person's client files (excluding previously provided information... [application reference numbers listed]'.³
2. The Department decided, under section 69 of the IP Act, to neither confirm nor deny the existence of the documents sought by the applicant.⁴
3. The applicant requested⁵ an internal review of the Department's decision. The internal review decision confirmed the earlier decision to neither confirm nor deny the existence of the documents sought.⁶

¹ On 19 May 2025.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the applicant's application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in Chapter 8, Part 3 of the IP Act and Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the IP Act and RTI Act in this decision are to those Acts **as in force prior to 1 July 2025**. These may be accessed at <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014>> and <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>> respectively.

³ Scope as construed by the Department and communicated to the applicant by letter dated 22 May 2025.

⁴ Decision dated 12 June 2025.

⁵ On 18 June 2025.

⁶ Decision dated 25 June 2025.

4. The applicant applied⁷ to the Office of the Information Commissioner (**OIC**) for external review of that decision, on the basis that the Department had incorrectly applied section 69 of the IP Act.
5. For the reasons outlined below, I affirm the Department's decision to neither confirm nor deny the existence of documents to which access is sought, on the basis that those documents would, if they existed, contain prescribed information.
6. Nothing in this decision should be taken to either confirm or deny the existence of the requested documents.

Reviewable decision

7. The decision under review is the Department's internal review decision dated 25 June 2025.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are referred to in these reasons (including footnotes).
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), in particular, the right of the applicant to seek and receive information.⁸ I consider that a decision-maker will, when observing and applying the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**), be 'respecting and acting compatibly with' these rights and others prescribed in the HR Act.⁹ I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human rights, as required under section 58(1) of the HR Act.¹⁰

Issue for determination

10. The issue for determination is whether the Department is entitled, under section 69 of the IP Act, to neither confirm nor deny the existence of the documents sought by the applicant.

Relevant law

11. Under the IP Act, an individual has a right to be given access to documents of an agency, to the extent they contain the individual's personal information.¹¹ However, this right is subject to limitations, including grounds for refusal of access.¹²
12. Section 69 of the IP Act allows a decision-maker to neither confirm nor deny the existence of a document which, if it existed, would contain prescribed information. This provision is intended to apply in situations where, due to the specific wording of the request, revealing that the agency does, or does not, have documents in response to an application, would reveal information to which an agency would normally be entitled to refuse access.

⁷ Dated 25 June 2025.

⁸ Section 21 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573].

¹⁰ I note the observations by Bell J on the interaction between equivalent pieces of Victorian legislation in *XYZ*, [573]: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'

¹¹ Section 40 of the IP Act.

¹² Section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act. The refusal grounds in the RTI Act can be found in section 47.

13. 'Prescribed information' is defined¹³ as including 'personal information, the disclosure of which would be contrary to the public interest under the Right to Information Act, section 47(3)(b)'.
14. Determining this issue essentially requires a decision maker to conduct a hypothetical public interest¹⁴ balancing exercise, making a judgement as to where the balance of the public interest would lie, were requested documents to exist. This involves a notional application of the public interest balancing test prescribed in section 49 of the RTI Act, including identifying public interest factors that would favour disclosure and nondisclosure, assuming the existence of requested documents.¹⁵

Applicant's Submissions

15. A delegate of the OIC provided the applicant with a preliminary view¹⁶ that the Department was entitled to neither confirm nor deny the existence of documents they sought. In doing so, the delegate acknowledged the applicant's submissions¹⁷ that they are aware of the Department's involvement with the other person specified in their access application.
16. In response to the preliminary view, the applicant provided submissions,¹⁸ which I have summarised, as follows:
 - the applicant seeks their own personal information, and this is not altered by the fact the information is filed under someone else's name;
 - their involvement with the Department was to advocate for the other person specified in their access application, and therefore, the details of these engagements are known to the applicant and 'extensively documented';
 - the nature of the applicant's relationship to the other person specified in their application should be recognised;
 - the applicant seeks information for the purposes of defending themselves against an alleged abuse of government power and defending their reputation;
 - the applicant is concerned that false or incomplete government records could impact their standing in the community and eligibility for public service roles;
 - the applicant's rights under the HR Act have not been given proper consideration, namely their right to take part in public life, to privacy and reputation and to a fair hearing;¹⁹ and
 - the OIC should consult with the other person specified in their application rather than make assumptions about their preferences for privacy.
17. To the extent these submissions relate to the Department's reliance on section 69 of the IP Act and/or the hypothetical public interest balancing test, I have considered them in my findings.

¹³ In schedule 5 of the IP Act.

¹⁴ The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

¹⁵ *Nadel and Queensland Police Service* [2020] QICmr 19 (6 April 2020) at [15].

¹⁶ On 12 August 2025.

¹⁷ As set out in their external review application dated 25 June 2025.

¹⁸ Dated 20 August 2025.

¹⁹ Sections 23, 25, 31 and 58 of the HR Act.

18. With respect to the applicant's concern about human rights considerations under the HR Act, I refer to paragraph [9] of this decision, which confirms my assessment of relevant human rights under the HR Act. I do not consider the additional human rights identified by the applicant relevant to this decision; that is, my decision does not limit these human rights in any way.
19. In addition to the submissions summarised above, the applicant offered²⁰ to modify the scope of their access application to:
- Information that personally identifies [applicant's name and date of birth] contained within departmental records relating to Person X [other specified person's name and date of birth], with appropriate de-identification measures applied to protect third party privacy from 1 January 2000 to 19th August 2025.*
20. To this, I note an applicant is unable to unilaterally expand the terms of an access application.²¹ Secondly, I note the substantive change offered, is not to remove the name of the other person from the scope of the application,²² but to propose the applicant receive information with contrary to the public interest information deleted. I note the relevant provision of the IP Act which contemplates this, is subject to section 69 of the IP Act.²³
21. Finally, the applicant asked²⁴ the Information Commissioner to consider questions around the interaction between the IP Act, the *Australian Human Rights Commission Act 1986* (Cth) and the *Commonwealth of Australia Constitution Act 1900* (Cth). I consider it unnecessary to replicate or answer these questions in this decision, given consideration of the purported issues is beyond the bounds of this review. If the applicant wishes to question constitutional issues, they should do so by the proper method in a court of competent jurisdiction.

Findings

22. For the reasons that follow, I am satisfied that section 69 of the IP Act applies to the access application, because the documents, if they exist, contain personal information, the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.

If the requested documents existed, would they contain personal information?

23. 'Personal information' is defined²⁵ as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'
24. Given the wording of the access application, it is reasonable to expect that, if the requested documents exist, they would contain both the personal information of the applicant and the personal information of individuals other than the applicant, including at minimum, the other person specified in the application.

²⁰ Submission dated 20 August 2025.

²¹ *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) at [15].

²² A suggestion made to the applicant by the Department on 13 June 2025.

²³ Section 90 of the IP Act.

²⁴ Submission dated 20 August 2025.

²⁵ As defined under section 12 of the IP Act.

25. Given the role and function of the Department in administering the *Child Protection Act 1999* (Qld) (**CP Act**); if the Department were to hold any information responsive to the request, it is also reasonable to expect this would be in the context of the Department making decisions relating to the safety, wellbeing and best interests of a child/children.
26. Accordingly, if the requested documents were to exist, it is likely that they would contain the personal information of a child/children and that confirmation of their existence and disclosure would enable the identity of a child/children to whom the requested documents relate, to be reasonably ascertained.

If the requested documents existed, would disclosing the personal information, on balance, be contrary to the public interest?

27. Given the terms of the application, if the requested documents exist, they would contain the applicant's personal information. The RTI Act recognises the public interest in a person receiving access to their own personal information held by government.²⁶ I afford significant weight to this factor favouring disclosure.
28. If the requested documents exist, disclosure of them could reasonably be expected to enhance the government's accountability and inform the community of government operations.²⁷
29. The applicant has been clear that their role in engaging with the Department was limited to advocating for the other specified person, in the context of the Department's involvement with that individual. Despite the applicant's broad concerns about defending their reputation, they have not outlined any findings or action taken against them by the Department. Given these circumstances, if the documents exist, it is unclear how the factors favouring disclosure would be advanced and accordingly, I afford them low weight.
30. The applicant has submitted that if the requested documents exist, access to them would allow them to challenge any false or incomplete information. They also refer to defending themselves against an abuse of government power. As such, I have considered whether disclosure of the information could reasonably be expected to:
 - reveal that the information was incorrect, misleading, gratuitous, unfairly subjective, or irrelevant;²⁸ or
 - assist inquiry into possible deficiencies in the conduct or administration of an agency or official.²⁹
31. Other than the concerns raised by the applicant, there is no information before me to suggest that disclosure could reasonably be expected to reveal the Department's documents, if they exist, are incorrect, misleading, or irrelevant, nor that disclosure would assist any inquiry into possible conduct or administration deficiencies. There must be a reasonable basis on which I could say such an expectation arises.³⁰ Accordingly, I find these additional factors favouring disclosure do not apply.
32. As noted above at paragraphs [23]-[26], given the terms of the application, that is, the request for the applicant's personal information as it appears within the file of another individual; if the requested information exists, it will contain the personal information of

²⁶ Schedule 4, Part 2, item 7 of the RTI Act.

²⁷ Schedule 4, Part 2, items 1 and 3 of the RTI Act.

²⁸ Schedule 4, Part 2, item 12 of the RTI Act.

²⁹ Schedule 4, Part 2, item 5 of the RTI Act.

³⁰ *Z41 and Legal Services Commission* [2025] QICmr 57 (28 August 2025) at [27] and [29].

other individual/s, and have been obtained in the context of the Department administering the CP Act. As such I have identified the following factors favouring nondisclosure in the public interest:

- disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy;³¹
- disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead;³²
- disclosure of the information is prohibited by an Act;³³
- disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.³⁴

33. It would be contrary to the public interest to disclose the personal information of another person (assuming such information exists) because citizens are entitled to trust that personal information that is held by Government about them, will not be disclosed; they are entitled to keep information about their personal sphere private.³⁵ Given the context in which the information, if it exists, appears, that is within a departmental file, I am satisfied that disclosure of such personal information could reasonably be expected to cause a public interest harm and I afford significant weight to these nondisclosure factors.
34. I appreciate the applicant states they are aware of the involvement of the other person with the Department; however, to acknowledge the existence of a file in someone else's name (should it exist) would be to disclose the very information that section 69 of the IP Act is designed to protect.
35. The applicant's submissions appear to suggest that the factor favouring nondisclosure which would protect the named individual's right to privacy should be afforded low weight, due to the nature of their relationship. Neither the IP nor RTI Act contemplates an individual forfeiting or minimising their right to privacy on this basis. Similarly, the applicant does not gain entitlement to another living adult's personal information because of their relationship.³⁶
36. The applicant also suggested the OIC ought to consult with the other person named in their access application. Given I have decided the Department is entitled to neither confirm nor deny the existence of the documents sought, there is no basis for the OIC (or the Department) to consult with the named individual. However, it remains open to the applicant to resubmit their access application without reference to another person.
37. With respect to the second and third factors favouring nondisclosure, I note the CP Act has strict confidentiality provisions concerning information obtained by any person involved in the administration of the Act.³⁷ Disclosure of the requested information, if it exists, would clearly be prohibited by these broad provisions.
38. In addition, the Department relies upon information provided by a range of sources to enable it to perform its functions. I am satisfied that routinely disclosing information from within departmental files, if they exist, would, discourage individuals from coming forward

³¹ Schedule 4, Part 3, item 3 of the RTI Act.

³² Schedule 4, Part 4, item 6 of the RTI Act.

³³ Schedule 4, Part 3, item 22 of the RTI Act.

³⁴ Schedule 4, Part 3, item 16 of the RTI Act.

³⁵ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [27].

³⁶ *OZH6SQ and the Department of Health* (Information Commissioner Qld, Decision No 310805, 21 May 2012) at [19].

³⁷ Under sections 186-188 of the CP Act.

with information and cooperating with the Department, as they may consider that their identity and other personal information could be released to other individuals. This, in turn, could reasonably be expected to negatively impact the Department's ability to obtain this type of information in the future. As such, I afford these factors significant weight.

39. Taking into account the way the applicant has sought documents, I consider that, if they existed:

- there is significant public interest in the applicant accessing their own personal information;³⁸
- public interest considerations relating to government accountability and transparency are deserving of only low weight;³⁹
- disclosure would amount to a breach of the CP Act,⁴⁰ and it would be a significant departure from the public interest to act in a way that is contrary to legislative intent;⁴¹ and
- public interest factors relating to protecting the personal information and right to privacy of other individuals,⁴² and protecting an agency's ability to obtain confidential information,⁴³ are each deserving of significant weight.

40. On balance, I am satisfied that if the documents sought exist, the public interest factors favouring their nondisclosure outweigh those favouring their disclosure. As such, I find that if the documents exist, they would contain personal information, the disclosure of which would, on balance, be contrary to the public interest.

Conclusion

41. Given the specific wording of the access application, I am satisfied that if the documents sought exist, they would contain prescribed information, namely, the personal information of another individual, the disclosure of which would, on balance, be contrary to the public interest.

DECISION

42. For the reasons set out above, I affirm the reviewable decision⁴⁴ and find that the Department was entitled to neither confirm nor deny the existence of the information sought, pursuant to section 69 of the IP Act.

43. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.



Stephanie Davis
Assistant Information Commissioner

Date: 22 April 2026

³⁸ Schedule 4, Part 2, item 7 of the RTI Act.

³⁹ Schedule 4, Part 2, items 1 and 3 of the RTI Act.

⁴⁰ Under sections 186-188 of the CP Act.

⁴¹ Schedule 4, Part 3, item 22 of the RTI Act.

⁴² Schedule 4, Part 3, item 3 of the RTI Act and Schedule 4, Part 4, item 6 of the RTI Act.

⁴³ Schedule 4, Part 3, item 16 of the RTI Act.

⁴⁴ Under section 123(1)(a) of the IP Act.